

Amendment No. _____

Signature of Sponsor

AMEND Senate Bill No. 439*

House Bill No. 630

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Section 71-6-125(d), is amended by deleting the subsection and substituting the following:

(d)

(1) By January 31 of the following year, each district attorney general shall cause to be filed an annual report that summarizes the work of the VAPIT for the previous calendar year with the chairs of the judiciary committee of the senate and the criminal justice committee of the house of representatives. The report may be filed electronically.

(2) By January 31 of each year, the department shall report the following information from the adult protective services program to the chairs of the judiciary committee of the senate and the criminal justice committee of the house of representatives:

(A) The number of reports received for investigation by type, such as emotional abuse, physical abuse, sexual abuse, neglect, self-neglect, and financial exploitation;

(B) The number of reports assigned for investigation by type, such as emotional abuse, physical abuse, sexual abuse, neglect, self-neglect, and financial exploitation;



0399558701



005736

(C) The number of reports not assigned due to not meeting criteria for adult protective services investigation by type, such as emotional abuse, physical abuse, sexual abuse, neglect, self-neglect, and financial exploitation;

(D) The number of final investigative dispositions of cases obtained in the current reporting year by type of disposition as follows:

- (i) Unsubstantiated, closed, no services provided;
- (ii) Substantiated, closed, client refused services;
- (iii) Substantiated, closed, no services provided; or
- (iv) Substantiated, closed, services provided;

(E) Demographic information, including age and gender of clients, in cases that are included in subdivisions (d)(2)(D)(ii) – (iv); and

(F) Relationship to the victim of perpetrators identified in cases that are included in subdivisions (d)(2)(D)(ii)-(iv) and that are not related only to self-neglect.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 439*

House Bill No. 630

by inserting the following new section immediately preceding the last section and renumbering the subsequent section accordingly:

SECTION _____. Tennessee Code Annotated, Title 71, Chapter 2, Part 1, is amended by adding the following as a new section:

(a) As used in this section, unless the context otherwise requires:

- (1) "Elderly person" means a person sixty (60) years of age or older;
- (2) "Executive director" means the executive director of the commission;
- (3) "State agency" means an agency of state government, including, but

not limited to:

- (A) The department of intellectual and developmental disabilities;
- (B) The department of mental health and substance abuse services;
- (C) The department of human services, including the division of adult protective services;
- (D) The department of children's services;
- (E) The department of commerce and insurance, including the state fire marshal's office;
- (F) The Tennessee bureau of investigation;
- (G) The bureau of TennCare; and
- (H) The department of health;



0130925503



016626

(4) "Unlicensed facility" means a facility that has been found to be in violation of § 68-11-213 or § 33-2-405 for failure to be licensed by a state agency; and

(5) "Vulnerable person" means a person eighteen (18) years of age or older who, by reason of advanced age or other physical or mental condition, is deemed by a state agency to be vulnerable.

(b) The executive director shall establish and maintain a registry containing the names and addresses of unlicensed facilities that have been determined by a state agency to be providing care to elderly or vulnerable persons without maintaining the appropriate licensure under title 33 or 68. The executive director shall publish the registry on the commission's website.

(c) A state agency that finds that a person or facility is operating an unlicensed facility in violation of § 68-11-213 or § 33-2-405 shall notify the executive director within five (5) business days of the finding. The state agency shall provide the executive director with the following:

- (1) The name of the facility;
- (2) The names of the facility's owners or operators;
- (3) The physical location or mailing address of the facility;
- (4) A citation to the statutory or regulatory authority used by the state agency in making the finding; and
- (5) Other information that the state agency deems necessary to adequately identify the facility to the public.

(d) Within five (5) business days of receipt of notice under subsection (c), the executive director shall publish on the registry the documents and information provided by the state agency. The executive director shall notify the person or facility in writing, based on the mailing address provided by the state agency, within three (3) business days of publication on the registry.

(e) A person or facility published on the registry may appeal the publication to the executive director within thirty (30) days of notification under subsection (d). The executive director or the executive director's designee shall afford the person or facility a hearing in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. Following the contested case, if the executive director finds that the person or facility was appropriately placed on the registry and was in operation after receiving notice under subsection (d), then the executive director may seek injunctive relief in Davidson County chancery court.

(f) On or after July 1, 2022, it is unlawful for a person or facility to operate an unlicensed facility in violation of § 68-11-213 or § 33-2-405 after notification of publication on the registry. A violation of this subsection (f) is a Class D felony.

(g) A state agency that notified the executive director of a finding under subsection (c) may later recommend to the executive director the removal of a person or facility's information from the registry, if:

(1) The state agency finds that the original notice to the executive director was in error; or

(2) The facility has applied for and obtained the necessary licensure under title 33 or 68. The state agency shall provide the facility's license number and the date of licensure.

(h) The executive director may promulgate rules to implement this section. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Amendment No. _____

Signature of Sponsor

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 2748

House Bill No. 2583*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-15-401(h), is amended by adding the language "adverse effects on the emotional and mental health and welfare," immediately after the language "but not limited to,".

SECTION 2. Tennessee Code Annotated, Section 39-15-401(d)(2), is amended by deleting the subdivision and substituting instead the following:

(2) For purposes of this subsection (d), a person engages in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if:

(A) The person's conduct related to the controlled substance methamphetamine or any other controlled substance listed in chapter 17, part 4 of this title, except a Schedule VI controlled substance, exposes the child to the controlled substance and an analysis of a specimen of the child's blood, hair, fingernail, urine, or other bodily substance indicates the presence of methamphetamine or any other controlled substance listed in chapter 17, part 4 of this title, except a Schedule VI controlled substance, in the child's body; or

(B) The person knowingly operates an unlicensed child care agency in violation of § 71-3-505(a) and in doing so commits an act of abuse, as defined in § 37-1-102, against a child.

SECTION 3. This act takes effect July 1, 2022, the public welfare requiring it.



0759071503



016619

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1390*

House Bill No. 1493

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. This act is known and may be cited as the "Tennessee Kratom Consumer Protection Act."

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new section:

(a) As used in this section:

(1) "Certificate of analysis" (COA) means a certificate from a third-party laboratory describing the results of the laboratory's testing of a sample;

(2) "Kratom extract" means a food product or dietary ingredient containing any part of the leaf of the plant *mitragyna speciosa* that has been extracted and concentrated in order to provide more standardized dosing;

(3) "Kratom product" means a food product or dietary ingredient containing any part of the leaf of the plant *mitragyna speciosa* or an extract of it that is manufactured as a powder, capsule, pill, beverage, or other edible form;

(4) "Processor" means any entity that prepares, manufactures, distributes, or maintains kratom products; and

(5) "Retailer" means any entity that sells, distributes, advertises, represents, or holds itself out as selling or maintaining kratom products.

(b) A processor shall not prepare, distribute, sell, or expose for sale any of the following:



0629247508



005797

- (1) A kratom product adulterated with a dangerous non-kratom substance that renders the kratom product injurious to a customer;
- (2) A kratom product contaminated with a poisonous or otherwise deleterious non-kratom ingredient, including, but not limited to, any prohibited controlled substance under this part;
- (3) A kratom extract that contains levels of residual solvents higher than permitted by relevant United States Pharmacopeia (USP) guidelines;
- (4) A kratom product containing a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than two percent (2%) of the overall alkaloid composition of the product;
- (5) A kratom product containing any synthetic alkaloids including, but not limited to, synthetic mitragynine, synthetic 7-hydroxymitragynine, or any other synthetically derived compounds of the kratom plant;
- (6) A kratom product that does not provide adequate labeling directions, including, at a minimum:
 - (A) Directions necessary for safe and effective use by consumers;
 - (B) A recommended serving size;
 - (C) A list the ingredients;
 - (D) A health warning advising that the product should not be used if pregnant;
 - (E) A health warning advising that the product should not be used by minors;
 - (F) The name and address for the manufacturer, packer, or distributor; and
 - (G) The statement: "This product has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease."

(c) Nothing in this section limits the ability of a processor to mix or blend a kratom plant material with another substance that is not dangerous and does not alter the naturally occurring levels of alkaloids in kratom.

(d) A retailer shall not distribute, sell, or expose for sale a kratom product to an individual under eighteen (18) years of age.

(e) Upon demand by a Tennessee law enforcement or consumer safety officer, the retailer shall provide a COA for each batch of kratom material used to produce a finished kratom product that is offered for sale that certifies the material:

(1) Has a level of 7-hydroxymitragynine that complies with subdivision (b)(4);

(2) Has less than one colony forming unit per gram (1.0 cfu/g) of *Salmonella* or *Escherichia coli* (*E. coli*);

(3) Has less than one part per million (1 ppm) of any heavy metals, including, but not limited to, lead or arsenic;

(4) Has less than forty-one hundredths parts per million (0.41 ppm) of cadmium; and

(5) Has less than three-tenths parts per million (0.3 ppm) of mercury.

(f) A processor that violates this section is subject to an administrative fine of not more than five hundred dollars (\$500) for the first offense and not more than one thousand dollars (\$1,000) for the second or subsequent offense. Upon the request of a person to whom an administrative fine is issued, the commissioner of health shall conduct a hearing and make a finding concerning the alleged violation.

(g) A retailer does not violate this section if the retailer shows, by a preponderance of the evidence, that it relied in good faith upon the representations of the processor of the kratom product.

SECTION 3. This act takes effect July 1, 2021, the public welfare requiring it.

House Criminal Justice Subcommittee Am. # 1

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1904

House Bill No. 1927*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-17-402(16)(C), is amended by deleting the punctuation at the end of the subdivision and substituting instead the language ", unless the substance at issue has a tetrahydrocannabinol concentration of more than three-tenths of one percent (0.3%) on a dry weight basis;".

SECTION 2. This act takes effect July 1, 2022, the public welfare requiring it.



0257148401

- 1 -



015310

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2545

House Bill No. 2525*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 33, is amended by adding the following as a new part:

40-33-301. Short title.

This part is known and may be cited as the "Criminal Forfeiture Process Act".

40-33-302. Purposes and application.

(a) The purposes of this part are to:

- (1) Deter criminal activity by reducing its economic incentives;
- (2) Confiscate property used in violation of the law;
- (3) Disgorge the fruit of illegal conduct; and
- (4) Protect the due process rights of property owners.

(b) This part applies to the seizure and forfeiture of property, including vehicles, used in or derived directly from one (1) or more of the following criminal offenses that occurs on or after July 1, 2022:

- (1) Arson, under § 39-14-301 or § 39-14-303;
- (2) Aggravated arson, under § 39-14-302;
- (3) Reckless burning, under § 39-14-304;
- (4) Unauthorized use, under § 47-25-1105;
- (5) Offenses involving controlled substances or controlled substance analogues, under title 39, chapter 17, part 4; title 53, chapter 11, part 3; or title 53, chapter 11, part 4;



0441311103



015984

(6) Driving while license cancelled, suspended, or revoked due to a conviction for driving under the influence, under § 55-50-504;

(7) Second or subsequent conviction for driving under the influence, under § 55-10-401;

(8) Offenses involving alcoholic beverages or beer, for which property is subject to seizure under § 57-5-409, § 57-3-411, or § 57-9-201;

(9) Offenses involving unpaid tobacco tax, under § 67-4-1020; and

(10) Offenses of the wildlife laws, for which property is subject to seizure under § 70-6-202.

(c) In addition to the offenses listed in subsection (b), this part applies to the seizure and forfeiture of all property that, prior to July 1, 2022, was forfeited utilizing the procedure provided in title 40, chapter 33, part 2. If the seizure of property subject to forfeiture by this part occurs on or after July 1, 2022, the procedure set out in this part is the exclusive procedure for the forfeiture of the seized property. If property was seized prior to July 1, 2022, the procedure set out in title 40, chapter 33, part 2, remains the procedure for the forfeiture of that property.

40-33-303. Definitions.

As used in this part:

(1) "Abandoned property":

(A) Means personal property the rights to which and the control of which an owner has intentionally relinquished; and

(B) Does not include real property;

(2) "Actual knowledge" means a direct and clear awareness of information, a fact, or a condition;

(3) "Contraband" means goods that may not be lawfully possessed, including drugs that are listed in Schedule I, II, III, IV, or V of the federal

Controlled Substances Act (21 U.S.C. § 301 et seq.) and that are possessed without a valid prescription, and firearms prohibited by § 39-17-1302;

(4) "Conveyance" means a device used for transportation and:

(A) Includes a motor vehicle, trailer, snowmobile, airplane, vessel, and any equipment attached to the conveyance; and

(B) Does not include property that is stolen in violation of a law;

(5) "Innocent owner":

(A) Means an owner, an owner-in-joint-tenancy, or the defendant's heir or other owner of property subject to forfeiture who does not have actual knowledge of the use of the property in a crime for which a law authorizes the forfeiture of property; and

(B) Does not include the defendant or a secured interest holder;

(6) "Instrumentality":

(A) Means property that is lawful to possess but that is used in the furtherance or commission of an offense to which forfeiture applies; and

(B) Includes land, a building, a container, a conveyance, equipment, material, a product, a computer, computer software, a telecommunications device, a firearm, ammunition, and ammunition and firearms accessories;

(7) "Law enforcement agency" means a non-federal police force or other local or state government agency that is authorized to seize property for forfeiture in this state;

(8) "Proceeds" means United States currency, other currency, securities, negotiable instruments, or other means of exchange obtained from the sale of property or contraband;

(9) "Prosecuting authority" means a district attorney general, or attorney general and reporter, appointed or charged by law with the responsibility for prosecuting crime, or an attorney acting under specific direction and authorization of such person;

(10) "Real property" means land and anything growing on, attached to, or erected on land, including a building; and

(11) "Secured interest holder":

(A) Means a secured creditor, mortgagee, lienholder, or other person who has a valid claim, security interest, mortgage, lien, leasehold, or other interest in property that is subject to forfeiture; and

(B) Does not include the defendant or an innocent owner.

40-33-304. Jurisdiction.

(a) There is no civil forfeiture under this part.

(b) The court with jurisdiction over the related criminal matter has jurisdiction over the forfeiture proceeding.

40-33-305. Seizure of personal property with process.

At the request of the prosecuting authority, a court may issue an ex parte order to seize property that is subject to forfeiture and for which forfeiture is sought. The execution on the order to seize the property and the return of the property, if applicable, are subject to this part and other applicable law.

40-33-306. Seizure of personal property without process.

Personal property is subject to seizure, incident to a lawful search, without a court order, if:

(1) The personal property subject to forfeiture is seized incident to a lawful arrest for a crime;

(2) The law enforcement officer has probable cause to believe that the delay caused by obtaining a court order would result in the removal or destruction of the personal property; or

(3) The personal property subject to seizure is the subject of a previous, valid judgment of forfeiture in favor of the state.

40-33-307. Seizure or restraint of real property with process.

(a) Real property is not subject to seizure without a court order.

(b) A court shall not issue an order for the seizure of real property unless the defendant, and any other person with a known interest in the property, receives proper notice and is given an opportunity for a contested hearing to determine whether or not there is probable cause for the seizure.

(c) To satisfy the notice requirement in subsection (b), notice may be made by publication if personal service has not been realized after reasonable attempts.

(d) This section does not prohibit a prosecuting authority from filing a lis pendens or seeking a restraining order to hinder the sale or destruction of real property. However, if the prosecuting authority obtains a lien lis pendens or a restraining order, the prosecuting authority shall notify the defendant, and any other person with a known interest in the real property, within thirty (30) days.

40-33-308. Stolen property and contraband.

No property right exists in stolen property or contraband. Stolen property and contraband are subject to seizure. Stolen property must be returned to the rightful owner of the property, and contraband must be disposed of according to law.

40-33-309. Receipt.

When a law enforcement officer seizes property that is subject to forfeiture, the officer shall provide notice of the seizure in the form of an itemized receipt to the person possessing the property or, in the absence of a person to whom the receipt could be

given, shall leave the receipt in the place where the property was found, if possible. The receipt must be numbered for future reference, if possible.

40-33-310. Property exempt from seizure and forfeiture.

(a) Subject to subsection (c) and notwithstanding a law to the contrary, the following types of property are exempt from seizure and forfeiture:

- (1) Real property that is a person's homestead;
- (2) United States currency in the amount of two hundred dollars (\$200) or less; and
- (3) A motor vehicle with a market value of less than two thousand dollars (\$2,000).

(b) A law enforcement agency may use the most recent issue of an authoritative automotive pricing manual, such as the NADA Official Used Car Guide, Southeastern Edition, to establish the value of a motor vehicle.

(c) In the interest of just and efficient use of government resources, a prosecuting authority may establish higher values for the exemptions in subdivisions (a)(2) and (3), based on the prosecuting authority's exclusive determination of:

- (1) The type and number of occurrences of offenses that include the seizure of property; and
- (2) The average value of seized property, minus the costs to seize and forfeit seized property.

40-33-311. Storing seized property and depositing seized currency.

(a) The seizing agency is responsible for providing storage, security, and maintenance for all property in the seizing agency's custody unless another agency agrees to accept responsibility for the property. The commander of a multijurisdictional task force may assign the responsibility to one (1) agency.

(b) The seizing agency may take reasonable actions, including the use of photography, to preserve currency for use as evidence in proceedings under this chapter.

40-33-312. Waiver prohibition.

(a) A law enforcement officer, other than the prosecuting authority, shall not request, induce, or require a person to waive, for purpose of seizure or forfeiture, the person's interest in property.

(b) A document purporting to waive a person's interest or rights in seized property is void and inadmissible in court, unless the waiver was obtained by the prosecuting authority.

40-33-313. Title.

(a) Title to property that is subject to forfeiture vests with this state when the court issues a forfeiture judgment and relates back to the time when the property was seized or restrained.

(b) Title to substitute assets vests when the court issues an order forfeiting substitute assets.

40-33-314. Counsel.

(a) If a defendant in a criminal matter is represented by a public defender or court-appointed counsel and the defendant is also a claimant for the return property that was seized as part of the criminal matter, the public defender or court-appointed counsel shall represent the defendant in the forfeiture proceeding.

(b) If the defendant or an innocent owner engages in pro se representation as the claimant in a forfeiture proceeding before a judge, the court may exercise its discretion in applying the rules of pleading, procedure, and evidence.

40-33-315. Notice to other known owners.

(a) A prosecuting authority, or the prosecuting authority's designee, shall perform a reasonable search of vehicle registration records, property records, and other

government records to identify any person, other than the defendant, known to have an interest in property that is subject to forfeiture.

(b) A prosecuting authority shall give notice by personal service to any person identified as having an interest in property that is subject to forfeiture, who is not charged or indicted. The notice must include, if available, the seizure receipt number pursuant to § 40-33-309. The notice required by this subsection (b) may be made by publication if personal service has not been realized after reasonable attempts.

(c) The following language must conspicuously appear in the notice required by subsection (b):

WARNING: You may lose the right to be heard in court if you do not file promptly a statement of interest or ownership. You do not have to pay a filing fee to file your notice.

(d) If the prosecuting authority does not serve notice on any person identified as having an interest in property that is subject to forfeiture and no time extension is granted, or the extension period has expired, the court shall order the return of the property to that person upon that person's request. Contraband must not be returned.

40-33-316. Prompt post-seizure hearing.

(a) Following seizure, a defendant in the related criminal matter, or any other person with an interest in the seized property has the right to, and may petition the court for, a prompt post-seizure hearing.

(b) A court may, at the court's discretion, hold a prompt post-seizure hearing:

(1) As a separate hearing; or

(2) At the same time as a determination of probable cause or other pretrial hearing.

(c) A party to a prompt post-seizure hearing, by agreement or for good cause, may file a motion with the court for one (1) extension of no more than ten (10) days. A motion for an extension may be supported by affidavits or other evidence.

(d) A court that conducts a prompt post-seizure hearing shall order the return of seized property if the court finds:

- (1) The seizure was invalid;
- (2) A criminal charge has not been filed and no extension of the filing period is available;
- (3) The seized property is not reasonably required to be held as evidence; or
- (4) The final judgment likely will be in favor of the defendant, or any other person with an interest in the property.

(e) At the court's discretion, the court may order the return of funds and property, not needed as evidence, in an amount sufficient for the defendant to obtain the counsel of the defendant's choice but less than the total amount seized.

(f) This section does not apply to contraband.

40-33-317. Notice of proposed forfeiture accompanying charging instrument.

(a) Except as provided in § 40-33-318, in a case in which the prosecuting authority seeks forfeiture of property, the prosecuting authority shall file a notice of proposed forfeiture with the court. A notice of proposed forfeiture must accompany the charging instrument and include the following information:

- (1) A description of the seized property;
- (2) The time, date, and place of the seizure;
- (3) A seizure receipt number pursuant to § 40-33-309, if available; and
- (4) A description of how the property was used in, or derived from, the alleged crime.

(b) A prosecuting authority may request, in the notice of proposed forfeiture, the forfeiture of property as a process after a conviction for the crime for which the defendant is charged or as part of sentencing consideration.

(c) A notice of proposed forfeiture must not be read to the jury.

(d) At the court's discretion, the court may allow the prosecuting authority to amend the notice of proposed forfeiture as required in the interest of justice.

(e) A prosecuting authority shall serve the notice of proposed forfeiture:

- (1) With the initial charging instrument;
- (2) Separately from the charging instrument, but not more than ninety (90) days after the presentment of the charging instrument for a misdemeanor;
- (3) By the earlier of ninety (90) days after presentment of the charging instrument or one hundred eighty (180) days after an arrest for a felony; or
- (4) By a time determined in the court's discretion.

(f) A court may grant an unlimited number of ninety-day extensions for the filing of a charging instrument if, for each extension, the court determines probable cause is shown and additional time is warranted.

(g) The court shall order the return of the property to the owner if the prosecuting authority does not file a charging instrument as required by the court's rules, the period of an extension expires, or the court does not grant an extension.

40-33-318. Notice of proposed forfeiture after indictment.

(a) After the issuance of an indictment, in a case in which the prosecuting authority seeks forfeiture of property, the prosecuting authority shall file a notice of proposed forfeiture with the court responsible for the criminal trial. A notice of proposed forfeiture filed under this section must include the information required by § 40-33-317(a)(1)-(4).

(b) A prosecuting authority may request, in the notice of proposed forfeiture, the forfeiture of property as a process after a conviction for the crime for which the defendant is charged or as part of sentencing consideration.

(c) A notice of proposed forfeiture must not be read to a jury.

(d) At the court's discretion, the court may allow the prosecuting authority to amend the notice of proposed forfeiture as required in the interest of justice.

(e) A prosecuting authority shall serve the notice of proposed forfeiture:

(1) By the earlier of ninety (90) days after presentment to a grand jury or one hundred eighty (180) days after an arrest for a felony; or

(2) By a time determined in the court's discretion.

(f) Upon request of a prosecuting authority, the court may enter a restraining order, issue an injunction, or take other action to preserve the availability of property only:

(1) Upon the issuance of an indictment; or

(2) Prior to the issuance of an indictment, if the court finds that there is a substantial probability the prosecuting authority will prevail on the issue of criminal forfeiture and that failure to enter the order will result in property being destroyed, removed from the jurisdiction, or otherwise made unavailable for forfeiture.

(g) An order entered, injunction issued, or other action taken based on a finding made under subdivision (f)(2) must not remain in effect for more than ninety (90) days unless extended by the court for good cause shown, or if an indictment is issued.

40-33-319.

Discovery conducted in a forfeiture proceeding is subject to the rules of criminal procedure.

40-33-320.

(a) Property is subject to forfeiture under this part if:

(1) The defendant was arrested for an offense to which forfeiture applies under § 40-33-302;

(2) The defendant is convicted in a court of competent jurisdiction of a criminal offense for which forfeiture is applicable, except as provided in § 40-33-321; and

(3) The prosecuting authority establishes by a preponderance of the evidence that the property is an instrumentality of or proceeds derived directly from the crime for which the prosecuting authority secured a conviction.

(b) Following a defendant's conviction for an offense to which forfeiture applies, the court shall hold a forfeiture proceeding at its discretion. The court shall conduct the forfeiture proceeding without a jury.

(c) Except as required by § 40-33-310, nothing in this part prevents property from being forfeited as part of:

- (1) A plea agreement;
- (2) A diversion agreement; or
- (3) A grant of immunity or reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution.

(d) If the defendant is represented by counsel, the parties to an exchange described in subdivision (c)(3) may file notice with the court under seal. If the defendant is not represented by counsel, the prosecuting authority may file an ex parte notice, under seal, with the court. The notice must advise the court of the reason for granting immunity, reducing punishment, or not filing a charge.

(e) The court may use the notice described in subsection (d) in its consideration of an order to transfer the title to the property to this state and disposal of forfeited property.

40-33-321. Exceptions to the conviction requirement.

A court may waive the conviction requirement in § 40-33-320(a)(2) and grant title to the property to this state if the prosecuting authority files a motion no fewer than ninety (90) days after the property is seized and shows by a preponderance of the evidence that, before conviction, the defendant:

- (1) Died;

- (2) Was deported by the United States government;
- (3) Abandoned the property; or
- (4) Fled the jurisdiction.

40-33-322. Proportionality.

(a) A defendant who claims an interest in property that was seized for forfeiture may petition the court with jurisdiction over the related criminal matter to determine, before trial, at trial, or upon conviction, whether the forfeiture is unconstitutionally excessive under the United States Constitution or the Constitution of Tennessee.

(b) A defendant has the burden of establishing that the forfeiture is unconstitutionally excessive by a preponderance of the evidence at a hearing conducted by the court without a jury.

(c) A court may consider all relevant factors to determine whether a forfeiture is unconstitutionally excessive, including:

- (1) The seriousness of the offense and its impact on the community, including the duration of the activity, whether a firearm was used during the commission of the offense, and harm caused by the defendant;
- (2) The extent to which the defendant participated in the offense;
- (3) The extent to which the seized property was used in committing the offense;
- (4) Whether the offense was completed or attempted;
- (5) The sentence or fine to be imposed for committing the offense;
- (6) The hardship to the defendant if the forfeiture of a motor vehicle would deprive the defendant of the defendant's livelihood; and
- (7) An unjust hardship to the defendant's family if the property is forfeited.

(d) A court may consider all factors related to the fair market value of property that is subject to forfeiture to determine the value of the property.

(e) A court shall not consider the value of property that is subject to forfeiture to this state in determining whether the forfeiture is unconstitutionally excessive.

40-33-323. Secured interest holder.

(a) Property that is encumbered by a security interest is not subject to forfeiture.

(b) A prosecuting authority shall promptly return property to a secured interest holder, other than the defendant in the related criminal matter or an innocent owner, up to the value of the secured interest. A prosecuting authority shall not return contraband.

(c)

(1) If a prosecuting authority does not promptly return property to a secured interest holder as required by subsection (b), then the secured interest holder may petition the court for return of the property at any time before the court enters a judgment in the related criminal matter or grants title to the property to this state under § 40-33-321.

(2) When a petition is filed under subdivision (c)(1), the court shall hold a hearing on the petition within thirty (30) days, unless the court, in the court's discretion, determines to conduct the hearing at another time. The hearing must be held without a jury. The court may consolidate the hearing on the petition with another hearing before the court in the same matter.

(3) In a hearing held under subdivision (c)(2), the petitioner bears the burden of proving the validity of the petitioner's security interest, mortgage, lien, leasehold, lease, rental agreement, or other agreement by a preponderance of the evidence.

(4) If a petitioner meets the burden of proof required by subdivision (c)(3), but the prosecuting authority contests returning the property, the prosecuting authority bears the burden of proving, by a preponderance of the evidence, that:

(A) The petitioner's security interest is invalid;

(B) The petitioner's security interest resulted from a fraudulent conveyance; or

(C) The petitioner consented to the use of the property in the offense with which the defendant is charged in the related criminal matter.

(5) If the prosecuting authority does not contest the return of the property, or fails to meet the burden of proof required by subdivision (c)(4), then the court shall order the prosecuting authority to relinquish claim to the property, up to the value of the petitioner's interest established under subdivision (c)(3), and return the property interest to the petitioner.

40-33-324. Innocent owner.

(a) An innocent owner's interest in property is not subject to forfeiture.

(b) A prosecuting authority shall promptly return property to an innocent owner, up to the value of the innocent owner's interest. A prosecuting authority shall not return contraband.

(c)

(1) If a prosecuting authority does not promptly return property to an innocent owner as required by subsection (b), then the innocent owner may petition the court for return of the property at any time before the court enters a judgment in the related criminal matter or grants title to the property to this state under § 40-33-321.

(2) An innocent owner's petition for the return of property must include a statement of facts that includes:

(A) The petitioner's right, title, or interest in the property;

(B) The time and circumstances of the petitioner's acquisition of the petitioner's interest in the property;

(C) The seizure receipt number, pursuant to § 40-33-309, if available;

(D) Additional facts supporting the petitioner's claim; and

(E) The relief sought.

(3) When a petition is filed under subdivision (c)(1), the court shall hold a hearing on the petition within thirty (30) days, unless the court, in the court's discretion, determines to conduct the hearing at another time. The hearing must be held without a jury. The court may consolidate the hearing on the petition with another hearing before the court in the same matter.

(4) In a hearing held under subdivision (c)(3), the petitioner bears the burden of proving the validity of the petitioner's interest by a preponderance of the evidence.

(5) If a petitioner meets the burden of proof required by subdivision (c)(4), but the prosecuting authority contests returning the property, the prosecuting authority bears the burden of proving, by a preponderance of the evidence, that the petitioner is not an innocent owner because:

(A) The petitioner's interest in the property is invalid;

(B) The petitioner had actual knowledge that the property was used in, or derived directly from, the offense with which the defendant is charged in the related criminal matter;

(C) The petitioner deliberately avoided information that would establish actual knowledge that the property was used in, or derived directly from, the offense with which the defendant is charged in the related criminal matter; or

(D) The petitioner was not a bona fide purchaser for valuable consideration, and without notice of any defect in title.

(6) If the prosecuting authority does not contest the return of the property, or fails to meet the burden of proof required by subdivision (c)(5), then the court shall order the prosecuting authority to relinquish claim to the property,

up to the value of the petitioner's interest established under subdivision (c)(4), and return the property interest to the petitioner.

(d) A filing fee for any statement filed under subdivision (c)(2) must be waived.

(e) A statement filed under subdivision (c)(2) is inadmissible as evidence in the related criminal matter.

(f) This section does not prohibit a person who petitions a court under subsection (c) from providing information to a party or testifying in a trial.

(g) A criminal defendant or convicted offender may invoke the right against self-incrimination or the marital privilege during a forfeiture proceeding. The court may draw an adverse inference from the invocation of the right against self-incrimination or marital privilege.

40-33-325. Judgment.

(a) If a prosecuting authority fails to obtain a conviction in a criminal matter that is related to property that is subject to seizure for forfeiture, or fails to meet its burden of proof in a forfeiture proceeding for the property under § 40-33-320(a), the court shall enter a judgment dismissing the forfeiture proceeding and ordering the return of the property to the rightful owner, unless the property is contraband.

(b) If a prosecuting authority obtains a conviction in a criminal matter that is related to property that was seized for forfeiture, and meets the burden of proof in a forfeiture proceeding for the property under § 40-33-320(a), the court shall enter a judgment forfeiting the property to this state.

(c) A court may enter judgment under this section following a hearing, pursuant to a stipulation or plea agreement, or, subject to the court's discretion, at another time.

40-33-326. Substitution of assets.

After a conviction in a criminal matter that is related to property subject to seizure for forfeiture, or, subject to the court's discretion, at another time, upon the prosecuting authority's motion, the court may order the forfeiture of substitute property owned solely

by the defendant who was convicted of the offense up to the value of property that is beyond the court's jurisdiction, or cannot be located through due diligence, only if the prosecuting authority proves by a preponderance of the evidence that the defendant intentionally:

- (1) Dissipated the property;
- (2) Transferred, sold, or deposited the property with a third party to avoid forfeiture;
- (3) Substantially diminished the value of the property; or
- (4) Commingled the property with other property that cannot be divided without difficulty.

40-33-327. No additional remedies.

A prosecuting authority shall not seek a personal money judgment or other remedy related to the forfeiture of property not provided for in this part, unless authorized by a law that provides notice and an opportunity for a hearing prior to the disposition of the property.

40-33-328. No joint and several liability.

A defendant in a criminal matter that is related to property subject to seizure for forfeiture is not jointly and severally liable for forfeiture awards owed by other defendants in the same criminal matter. When ownership is unclear, a court may order each defendant to forfeit property on a pro rata basis or by another means that the court finds equitable.

40-33-329. Appeals.

(a) A party to a forfeiture proceeding, other than the defendant in a criminal matter that is related to the property subject to forfeiture, may appeal a court order concerning the disposition of the property once the order is issued.

(b) A defendant in a criminal matter that is related to the property subject to forfeiture may appeal the court's decision regarding the seizure or forfeiture of property

following a court's issuance of a judgement under § 40-33-325.

40-33-330. Attorney fees.

In any judicial proceeding under this part in which a petitioner or criminal defendant prevails by recovering fifty percent (50%) or more, by value, of seized currency or other property claimed in the petition or forfeiture hearing, the court shall order the seizing agency or prosecuting authority to pay:

- (1) Reasonable attorney fees and other litigation costs incurred by the petitioner or criminal defendant;
- (2) Post-judgment interest; and
- (3) In cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure.

40-33-331. Return of property; damages and costs.

When a court orders the return of property to its owner under this part:

- (1) The law enforcement agency that holds the property shall return the property to the owner within a reasonable period not to exceed five (5) days after the date of the order;
- (2) The property owner is not responsible for payment of expenses related to towing, storage, or preservation of the property; and
- (3) The law enforcement agency that holds the property is responsible for damage to the property, storage fees, and related expenses applicable to property from the time that the property was seized until the time that the property is returned to the owner.

40-33-332. Disposition of property.

- (a) A court may order the destruction of contraband once the contraband is no longer needed as evidence.

(b) A court may order the sale of property in which title has been granted to the state under § 40-33-321, once the property is no longer needed as evidence.

(c) If a court orders forfeiture of property under this part, the court shall order the sale of forfeited property other than currency.

(d) Upon exhaustion of all appeals or, subject to the court's discretion, at another time, a court may order that forfeited currency and sale proceeds are used to:

(1) Pay restitution to the victim;

(2) Satisfy recorded liens, mortgages, or filed security interests in the forfeited property;

(3) Pay reasonable costs for the towing, storage, maintenance, repairs, advertising, and sale of the forfeited property; and

(4) Other costs related to the seizure, prevention of spoliation, and liquidation of the forfeited property.

(e) Except as otherwise required by this part, the proceeds from seizures and forfeitures made on or after July 1, 2022, must continue to be disposed of as required by § 40-33-211.

40-33-333. Sale restrictions.

Notwithstanding a law to the contrary, a law enforcement agency shall not sell forfeited property to any employee of the law enforcement agency, to a person related to an employee of the law enforcement agency within the third degree of consanguinity or affinity, or to another law enforcement agency.

40-33-334. Preemption.

The general assembly preempts the whole field of civil and criminal forfeiture. A county, city, town, municipality, or metropolitan government, or a local agency, department, or official, shall not occupy any part of the field of civil and criminal forfeiture.

40-33-335. Limitation on federal adoption.

(a) This chapter does not prohibit a law enforcement agency from collaborating with the federal government through the federal adoption of seized property or by participating in a joint state and federal task force.

(b) A district attorney general shall, after consultation with the appropriate United States attorney, establish guidelines for the use of federal adoption of seized property and participation in joint state and federal task forces in the district attorney general's jurisdiction based on federal safeguards against the circumvention of state law.

SECTION 2. Tennessee Code Annotated, Section 40-33-201, is amended by deleting the word "All" from the beginning of the first sentence and substituting instead the language "Effective until July 1, 2022, all".

SECTION 3. Tennessee Code Annotated, Section 39-17-1008, is amended by deleting subsection (a) and substituting instead the following:

(a) Until July 1, 2022, any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under title 40, chapter 33, part 2. On or after July 1, 2022, any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under the Criminal Forfeiture Process Act, compiled in title 40, chapter 33, part 3.

SECTION 4. Tennessee Code Annotated, Section 39-17-1008, is amended by deleting from subsection (b) the language "Notwithstanding § 40-33-211" and substituting instead the language "Notwithstanding § 40-33-211 until July 1, 2022, and § 40-33-331, on and after July 1, 2022".

SECTION 5. Tennessee Code Annotated, Section 53-11-201, is amended by deleting subdivision (b)(2)(C) and substituting instead the following:

(C) Notwithstanding subdivision (b)(2)(B) to the contrary, any vehicle seized prior to July 1, 2022, by a county or municipal agency and forfeited under title 40, chapter 33, part 2, may be used in the local drug enforcement program for a period not

to exceed five (5) years. Any vehicle seized on or after July 1, 2022, must be disposed of as provided in § 40-33-331.

SECTION 6. Tennessee Code Annotated, Section 55-3-203, is amended by deleting the last sentence of subsection (e) and substituting instead the following:

The seizure and forfeiture of a motor vehicle under this section prior to July 1, 2022, must be conducted in accordance with the procedure set out in title 40, chapter 33, part 1. The seizure of a motor vehicle under this section on or after July 1, 2022, must be conducted in accordance with the procedure set out in the Criminal Forfeiture Process Act, compiled in title 40, chapter 33, part 3.

SECTION 7. Tennessee Code Annotated, Section 55-50-504, is amended by deleting subdivision (g)(1) and substituting instead the following:

(1) The vehicle used in the commission of a person's violation of § 55-50-504, when the original suspension or revocation was made for a violation of § 55-10-401, or a statute in another state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2, if the violation occurred prior to July 1, 2022. The department is designated as the applicable agency, as defined by § 40-33-202, for all forfeitures authorized by this subsection (g) that occur prior to July 1, 2022. The vehicle used in the commission of a person's violation of § 55-50-504, when the original suspension or revocation was made for a violation of § 55-10-401, or a statute in another state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in the Criminal Forfeiture Process Act, compiled in title 40, chapter 33, part 3, if the violation occurred on or after July 1, 2022.

SECTION 8. Tennessee Code Annotated, Section 55-50-506, is amended by deleting subdivision (d)(1) and substituting instead the following:

(1) The vehicle used in the commission of a person's violation of this section prior to July 1, 2022, is subject to seizure and forfeiture in accordance with the

procedure established in title 40, chapter 33, part 2. The department of safety is designated as the applicable agency, as defined by § 40-33-202, for all forfeitures authorized by this subsection (d). On or after July 1, 2022, a motor vehicle used in the commission of a violation of this section must be seized and forfeited in accordance with the Criminal Forfeiture Process Act, compiled in title 40, chapter 33, part 3.

SECTION 9. The headings to sections, parts, and chapters in Section 1 of this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 10. This act takes effect July 1, 2022, the public welfare requiring it, and applies to any property subject to seizure and forfeiture that is seized on or after July 1, 2022.